



1934

## Lake Region Meeting

North Dakota Law Review Associate Editors

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## REMEDIES FOR THE BENCH

Discussing what he terms the "conceded retrogression" of the Bench in an article in the California State Bar Journal for July, Roy V. Rhodes, of the Los Angeles Bar, declares that the election of the Judges by the people, who are the sovereigns, and thus making them competitively dependent upon transient popular majorities—sometimes of minorities—robs us of the "great and dearly bought safeguard to our security, a politically independent judiciary."

We join Mr. Rhodes, in quoting from the speech of Rufus Choate, in the Massachusetts Constitutional Convention of 1853. Mr. Choate then said:

"Gentlemen begin by asking if we are afraid to trust the people. Well, sir, that is a very cunning question; very cunning indeed. Answer it as you will, they think they have you. If you answer yes—that you are afraid to trust the people—then they cry out 'he blasphemeth'. If you answer no—that you are not afraid to trust them—then they reply, 'why not permit them to choose their judges?'"

"It is a question certainly of some nicety to determine what offices the public good prescribes should be filled by a direct election of the people; and what should be filled by the appointment of others, as the governor and council, chosen by the people. If the nature of the office be such, the qualifications which it demands, and the stage on which they are to be displayed be such, that the people can judge of those qualifications as well as their agencies; and if, still farther, the nature of the office be such that the tremendous ordeal of a severely contested popular election will not in any degree do it injury—then the people should choose by direct election. If, on the other hand, an agent of the people, chosen by them for that purpose, can judge of the qualifications better than they can; or if from its nature it demands learning, and the terrors of a party canvass drive learning from the field—then the indirect appointment by the people, that is, appointment by their agent, is wisest."

Mr. Rhodes, however, deprecates, as does every student of present-day politics, that most appointive systems have failed to provide the necessary checks and safeguards, points out that "unrestricted appointments" do not supply the needed remedy, that there must be "discriminating supervision" of appointments, and that the closer we come to what Benjamin Franklin declared to be the ideal—election by lawyers alone—the more likely are we to make the office attractive to the right type of lawyers, the more likely are we to obtain, what we have so long sought, a truly independent, qualified judiciary.

California is now considering a proposed Constitutional Amendment, that will place the appointive power in the governor, the selection to be made from those recommended by a board, consisting of two high court judges and one state senator, with "periodical submission of the incumbent to a limited form of popular election," which, we assume, is to be by the Bar alone, as suggested by Benjamin Franklin.

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LAKE REGION MEETING

The Lake Region Bar Association held its district meeting on the 16th of June. The Secretary of the State Association was the principal speaker.

The meeting approved the bill prepared by the Committee on Criminal Law and Procedure of the State Association (see page 16 of the December, 1933, issue of Bar Briefs), and the report of the Committee on Fee Schedule (see page 150 of the June, 1934, issue of Bar Briefs), adding to the latter the following schedule for foreclosures: Mortgages of \$1000 or less: \$50.00; Mortgages of \$1000 to \$2000: \$75.00; Mortgages over \$2000: \$75.00, plus 1% on the amount in excess of \$2000.

District officers elected were: President, John A. Stormon, Rolla; Vice-Presidents, Clyde Duffy, Devils Lake, Frank Van Kent, Lakota, J. E. Garvey, Cavalier, H. B. Senn, Rugby, W. T. DePuy, Grafton, L. B. Stevens, Rolla, James Little, Leeds; Secretary-Treasurer, D. J. McLennan, Rolla.

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### W. A. McINTYRE

Enjoying one of his periodical respites from the burdening cares of the day with friends on the golf course, W. A. McIntyre, (Grand Forks, President State Bar Association 1926-27, member State Bar Board) suddenly found his physical labors ended, his cares and worries swept aside, and a judgment of "well done, good and faithful servant," entered without an uttered application. Shocking in its suddenness, his passing brought no other regrets to compatriots, friends or relatives, for a life well spent in capable, conscientious, faithful, loyal, upright service leaves only happy, pleasant memories. A picture the Editor has, personally, of an incident recited by him a few years ago, will remain, ever, as an inspiration to courage, fidelity, and a strictness of honor and integrity. We rejoice that he lived among us, and that circumstance permitted so many to make contact with this clean-chiselled character in an age of dissention and doubt.

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### RULES OF PRACTICE

We are indebted to Professor Moley's magazine "Today" for the following:

"The enactment by Congress of one of the most sweeping legal reforms in the history of the United States has gone almost unnoticed by the press. Congress has provided that the Supreme Court of the United States may prescribe uniform laws of practice and procedure in actions at law in the Federal courts. To vest this power in the courts rather than in the legislature has been the objective of practically every forward-thinking student of the administration of justice for a generation. It moves the Federal courts a long way in the direction of simple, expeditious and inexpensive litigation. Much credit is due for the initiation and enactment of this measure to Attorney General Cummings, Senator Ashurst and Representative Sumners."

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### SMALL CLAIMS PROCEDURE

One of the important reforms needed for our drawn-out legal procedure is one providing for a speedy, adequate remedy to those having small claims to be settled. For illustration, we point to Section 15 of the Minimum Wage Act (Supp. 396b15) which reads: "If any woman worker shall be paid by her employer less than the minimum